

ISSUES

The Administrative Law Judge found claimant had suffered a work-related left wrist injury while employed by the respondent. The Administrative Law Judge found claimant's left wrist injury resulted in a 24 percent permanent functional impairment of the left forearm. However, the Administrative Law Judge limited claimant's recovery to only medical treatment in accordance with K.S.A. 1991 Supp. 44-501(c), finding claimant was not disabled for a period of at least one week from earning full wages at the work which the claimant was employed.

Claimant contends he was disabled from work from earning full wages and further the provisions of K.S.A. 1991 Supp. 44-501(c) are not applicable to scheduled injuries listed in K.S.A. 1991 Supp. 44-510d. Claimant further contends he is entitled to the healing period allowance contained in K.S.A. 1991 Supp. 44-510d(b).

Respondent, on the other hand, contends the Administrative Law Judge's Award limiting claimant's compensation benefits to medical treatment as provided for in K.S.A. 1991 Supp. 44-501(c) should be affirmed. However, if claimant is entitled to permanent partial disability benefits based on the schedule of injuries listed in K.S.A. 1991 Supp. 44-510d, respondent contends the appropriate permanent functional impairment rating is 12 percent of claimant's left forearm with no healing period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

Findings of Fact

- (1) On the date of his injury, September 16, 1992, claimant was a long-term employee of the respondent who developed numbness in his left hand while driving a forklift.
- (2) The respondent provided claimant with medical treatment for his left upper extremity injury. Claimant was eventually referred to Dr. John B. Moore IV of Olathe, Kansas, who diagnosed left carpal tunnel syndrome.
- (3) On April 7, 1993, Dr. Moore performed a left carpal tunnel release.
- (4) After surgery, claimant was off work for three days and was placed on light duty for five days before returning to his regular forklift driving job.
- (5) The surgery relieved claimant of the numbness in his left hand but pain persisted in his left hand and wrist.
- (6) Claimant retired from respondent effective October 1, 1994, with his last day worked of August 31, 1994.

(7) After claimant retired, his left hand and wrist remained symptomatic.

(8) On November 30, 1994, the Administrative Law Judge referred claimant to plastic surgeon Lynn D. Ketchum, M.D., for an independent medical evaluation. The Administrative Law Judge requested Dr. Ketchum to examine the claimant and determine whether claimant was in need of medical treatment and if not, give an opinion on permanent functional impairment.

(9) Dr. Ketchum first saw claimant on December 15, 1994. From plain film x-rays, Dr. Ketchum found three cysts in claimant's left wrist lunate bone and corresponding cysts in the distal radius in line with the lunate bone. The doctor recommended a MRI because the lunate appeared sclerotic which could represent class I Kienbock's disease that very well could be related to claimant's work.

(10) An MRI examination was completed on June 22, 1995, the examination demonstrated Kienbock's disease that is defined as an aseptic necrosis of the left lunate bone. Dr. Ketchum opined the Kienbock's disease was in all likelihood related to claimant's employment with respondent or was certainly aggravated by such employment.

(11) On August 30, 1995, Dr. Ketchum performed a proximal row carpectomy of claimant's left wrist. This surgical procedure removed the lunate bone along with the neighboring scaphoid and triquetrum and trapezoid bones.

(12) Dr. Ketchum last saw claimant on July 2, 1996. In a letter to claimant's attorney dated November 27, 1996, the doctor found claimant had a 24 percent permanent functional impairment of the left upper extremity.

(13) At the request of the respondent, Michael J. Poppa, D.O., saw claimant for an examination and evaluation on November 1, 1995, October 16, and 18, 1996. Dr. Poppa opined claimant had a 12 percent functional impairment of the left lower extremity as a result of the carpal tunnel surgery and proximal row carpectomy surgery.

(14) Dr. Poppa, however, unequivocally testified claimant's Kienbock's disease was not caused or aggravated by claimant's work activities while employed by the respondent.

(15) Both Dr. Poppa and Dr. Ketchum testified claimant's left wrist injury was limited to the wrist area below claimant's left elbow.

Conclusions of Law

(1) K.S.A. 1991 Supp. 44-501(c) limits benefits as follows:

Except for liability for medical compensation . . . the employer shall not be liable under the workers compensation act in respect of any injury which does

not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

(2) The Appeals Board concludes claimant is not limited to medical compensation as required by K.S.A. 1991 Supp. 44-501(c). Claimant is entitled to permanent partial disability benefits because he missed three days of work and was placed on light duty for five additional days. Therefore, claimant was disabled from earning full wages for three days and did not return to his regular forklift job for another five days. See Gomez v. Monfort, Inc., Docket Nos. 196,240 and 196,241 (February 1998).

(3) Since both Dr. Ketchum and Dr. Poppa testified that claimant's left upper extremity injury was limited to an injury below the left elbow, claimant's entitlement to permanent partial disability benefits is limited by the schedule found at K.S.A. 1991 Supp. 44-510d(a)(12) to 200 weeks for loss of use of the left forearm.

(4) K.S.A. 1991 Supp. 44-510d(b) allows the director, in proper cases, to award additional compensation during the actual healing period not to exceed 10 percent of the total scheduled injury with a 15 week limit. When the injured worker returns to his or her usual job, the healing period is terminated. See Carter v. Koch Engineering, 12 Kan. App. 2d 74, Syl. ¶ 2, 735 P.2d 247, *rev. denied* 241 Kan. 838 (1987).

(5) The Appeals Board concludes claimant is entitled to a healing period equal to the three days he was unable to work and the five days he worked on a light duty job before he returned to his regular forklift driving job after the April 7, 1993, carpal tunnel surgery.

(6) The Appeals Board concludes Dr. Ketchum's opinions in regard to causation and permanent functional impairment are the most persuasive medical evidence contained in the record. This conclusion is supported by the fact that Dr. Ketchum is a board-certified plastic surgeon and examined and treated the claimant over a period of time pursuant to an order by the Administrative Law Judge for an independent medical examination.

(7) Therefore, the Appeals Board concludes claimant's work activities while employed by the respondent caused claimant's left carpal tunnel syndrome and permanently aggravated claimant's left wrist Kienbock's disease. Those two conditions and the subsequent surgeries resulted in a 24 percent permanent functional impairment of claimant's left forearm.

AWARD

WHEREFORE, the Appeals Board finds that the Award entered by Administrative Law Judge Floyd V. Palmer dated December 3, 1997, should be, and is hereby, modified as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Donald E. Curran, and against the respondent, Lawrence Paper Company, a qualified self-insured, and the Kansas Workers Compensation Fund for accidental injuries which occurred on September 16, 1992, and based upon an average weekly wage of \$401.53.

The claimant is entitled to .43 weeks of temporary total disability compensation at the rate of \$267.70 per week or \$115.11, followed by 48.17 weeks permanent partial compensation at the rate of \$267.70 per week or \$12,895.11 for a 1.14 week healing period and a 24% permanent partial disability of the forearm, making a total award of \$13,010.22, which is presently all due and owing.

The Appeals Board approves and adopts all other orders in the Administrative Law Judge's Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Eugene C. Riling, Lawrence, KS
Mark E. Kolich, Kansas City, KS
Michael R. Wallace, Shawnee Mission, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director